

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5864 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

BABUBHAI K JOSHI

Versus

GUJARAT STATE WAREHOUSING CORPORATION

Appearance:

1. Special Civil Application No. 5864 of 1998
MR GM JOSHI for Petitioner.
MR PJ KANABAR for Respondent,
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CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 27/09/2004

ORAL JUDGEMENT

1. In this petition, the petitioner has challenged the order dated 30th December, 1995 passed by the

Disciplinary Authority by which an amount of Rs.48,612/- was ordered to be recovered from the petitioner. The said order of 30th December, 1995 came to be appealed against by the petitioner, and the appeal of the petitioner came to be substantially rejected by the Appellate Committee, and the Appellate Committee was pleased to modify the order of recovery only to the extent of waiving an amount of Rs.2016/- and the rest of the recovery was sustained.

2. The petitioner has, therefore, approached this Court challenging the said orders passed by the Disciplinary Authority as well as the order passed by the Appellate Committee.

3. The facts leading to the present petition are that by a Memorandum dated 27th August, 1992, the respondent issued a charge-sheet against the petitioner who was holding the post of Manager (Commerce) but was placed under suspension pending enquiry. In the said charge-sheet dated 27th August, 1992, the respondent has levelled as many as nine charges. The charges nos.1 to 6 pertain to dereliction of duties by the petitioner regarding certain purchases made in his capacity as Manager (Commerce). There were certain other charges also levelled against the petitioner in the said charge-sheet with which we are not directly concerned.

4. After holding a Departmental Inquiry pursuant to the said charge-sheet dated 27th August, 1992, the Inquiry Officer submitted his report dated 21st October, 1995 to the Disciplinary Authority. A copy of the Inquiry Report was supplied to the petitioner and he was permitted to file his representation in response to the same. The Disciplinary Authority after considering the Inquiry Officer's report and the representation of the petitioner was by his order dated 30th December, 1995 pleased to hold that the charges against the petitioner are proved and considering the representation of the petitioner and his oral submissions, the Disciplinary Authority was pleased to order that an amount of Rs.48,612/- be recovered from the petitioner by way of penalty. The Disciplinary Authority in the said order dated 30th December, 1995 was pleased to record that the petitioner has committed misconduct of negligence, delay in purchase of the register, paper and other stationery for the Corporation, and had also ordered purchase at the highest rate and had thereby caused financial loss to the Corporation. The Disciplinary Authority was, therefore, pleased to pass the above mentioned order. The Appellate Authority, as recorded earlier, was pleased to modify the

order to the extent of reducing the recovery by an amount of Rs.2016/-, but sustained the remaining part of the order.

5. Assailing the said action of the respondent-authorities, learned Counsel Ms. Anupama Shrivastav appearing for Mr. G.M. Joshi for the petitioner has submitted that the Inquiry Officer's report is not a reasoned report, and the Inquiry Officer had not discussed the evidence on record to come to the conclusion that the charges are proved.

6. Learned Counsel for the petitioner has also submitted that the objection of the petitioner to Shri Ghanchi being appointed the Presenting Officer was not accepted by the Inquiry Officer which has resulted into miscarriage of justice. The learned Counsel has also submitted that certain documents, copies of which were not supplied to the petitioner have been taken into account by the Inquiry Officer, thereby violating the principles of natural justice.

7. In support of her contentions, the learned Counsel for the petitioner has relied on the decision of A.L.KARIA VS. PROJECT AND EQUIPMENT CORPORATION OF INDIA LTD. (1984) 3 SUPREME COURT CASES 316 in which it is held that the order of the Disciplinary Authority should be a reasoned order and the Honourable Supreme Court when found neither findings of Inquiry Officer, nor order of Disciplinary Authority which accepted those findings and imposed punishment of dismissal, nor order of the Appellate Authority which confirmed the order of the Disciplinary Authority supported by reasons, it was held that the orders were bad on the ground of non application of mind. In support of the same contention, the learned Counsel for the petitioner has placed reliance on the decision of this Court dated 14-9-2004 passed in Special Civil Application no.3834 of 1998 in which relying upon the decision of the Honourable Supreme Court in SHER BAHADUR v. UNION OF INDIA AND OTHERS reported in AIR 2002 SC 3030 wherein, when it was found that the Disciplinary Authority has not properly considered the petitioner's representation, in which number of contentions were raised to convince the Disciplinary Authority not to accept the Inquiry Officers report, and on that ground the order of the Disciplinary Authority was set aside. The learned Counsel for the petitioner has also relied on the decision of the Honourable Supreme Court in ANIL KUMAR v. PRESIDING OFFICER AND OTHERS reported in (1985) 3 SUPREME COURT CASES 378 in which it was observed that the Inquiry Officer's report should be

a reasoned report when the enquiry results in loss of livelihood or attaches stigma. For the same purpose, the learned Counsel for the petitioner has also placed reliance on the decision of the Honourable Supreme Court in THE COOPER ENGINEERING LIMITED v. SHRI P.P. MUNDHE reported in 1975 (2) SCC 661.

8. Relying on the decision of the Honourable Supreme Court in NAND KISHORE PRASAD v. THE STATE OF BIHAR AND OTHERS reported in AIR 1978 SUPREME COURT 1277, the learned Counsel has submitted that the conclusions arrived at by the Domestic Tribunal should be based on evidence, and not on conjectures and surmises.

9. Relying on the decision of the Honourable Supreme Court in UNION OF INDIA AND OTHERS V. J AHMED reported in (1979) 2 SUPREME COURT CASES 286, the learned Counsel has submitted that the allegations levelled against the petitioner even if taken on the face value, cannot be characterized as misconduct.

10. Appearing for the respondent-authorities, learned Counsel Shri Kanabar has submitted that the Departmental Inquiry was conducted in consonance with the principles of natural justice, and when it was found that the petitioner has committed serious misconduct, the Management had decided to recover the loss caused to the respondent by the petitioner through his acts and omissions. He submits that the petitioner was given full opportunity to defend himself. He further submits that the Inquiry Officer had considered all the aspects of the matter and the evidence on record and the report, therefore, cannot be brushed aside as not being a reasoned report. He has submitted that the scope of judicial inquiry of findings of facts arrived at by the Domestic Tribunal being limited, this Court should not interfere with the decision taken by the respondent-authorities. He has pointed out in particular, that paragraph 13 of the Inquiry Officer's report pertains to allegations against the petitioner for certain acts and omissions regarding sending trainees for computer training and the said charge has nothing to do with the impugned orders of penalty, and that, therefore, even if the allegations in the said paragraph are to be ignored there would be no difference in the final outcome.

11. Having considered the rival submissions and having examined the material on record, I find that the petitioner has not proved any case of violation of principles of natural justice. Despite sufficient time

being granted, learned Counsel for the petitioner has failed to substantiate the contention that documents, copies of which were not supplied to the petitioner have been taken on record and relied upon by the authorities below. Except for an oral statement to this effect no further material is pointed out to substantiate this ground. No other arguments have been advanced to suggest violation of principles of natural justice in conducting inquiry.

12. Once it is found that the inquiry was conducted in consonance with the principles of natural justice, jurisdiction of a High Court examining the validity of the order passed by the Disciplinary Authority pursuant to validly conducted inquiry is extremely narrow. In a recent Division Bench decision dated 25th August, 2004 passed in Special Civil Application no.5759 of 1999 after considering several decisions of the Honourable Supreme Court, the Division Bench had made the following observations:

"From the above decisions, following legal principles can be culled out:

- (i) A disciplinary proceeding is not a criminal trial. The standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt.
- (ii) The High Court cannot sit in appeal over the decision of the domestic tribunal. Therefore, where there are some relevant materials, which the authority has accepted and which material may reasonably support the conclusion that the officer is guilty, it is not the function of the High Court exercising its jurisdiction under Article 226 of the Constitution of India to review the materials and to arrive at an independent finding on the materials.
- (iii) If the inquiry is properly held, the question of adequacy or reliability of evidence cannot be gone into by the High Court. High Court cannot interfere with the penalty if the conclusion of the competent authority is based on evidence, even if some of it is found to be irrelevant or extraneous to the matter.

(iv) In case of disciplinary inquiry, technical rules of evidence have no application.

(v) The only consideration that Court has in its judicial review is to consider whether the conclusion is based on evidence and supports the findings or whether the conclusion is based on no evidence. To put it differently, the High Court can interfere if the findings are perverse and are not supported by evidence on record or the findings recorded at the domestic trial are such to which no reasonably prudent person would have ever reached."

13. Keeping the above judicial principles in mind, if one examines the Inquiry Officer's report and the Disciplinary Authority's order, it can be seen that the Inquiry Officer has come to the conclusions based on evidence on record. As observed in the above decisions, the High Court cannot sit in appeal over the decision of the domestic tribunal and that, therefore, where there are some relevant materials, which the authority has accepted and which material may reasonably support the conclusion that the officer is guilty, it is not the function of the High to review such material and to arrive at an independent finding. Again, as observed above, if the inquiry is properly held the question of adequacy or reliability of evidence cannot be gone into by the High Court.

14. Applying the said principles, if we look at the Inquiry Officer's report again, it is found that the findings of the Inquiry Officer are supported by evidence on record and the findings cannot be characterized as perverse in the sense that there is no evidence on record whatsoever to come to the conclusion that the Inquiry Officer has reached. Even if I were to accept the contention of the learned Counsel for the petitioner that the Inquiry Officer's report is not elaborate, that by itself would not mean that the report is not a reasoned report. In that view of the matter, reliance placed by the learned Counsel for the petitioner on the decisions of the Honourable Supreme Court of India and this High Court cannot be applied in the facts of the present case.

15. The objection of the petitioner to Shri Ghanchi being appointed as a Presenting Officer which was

rejected by the Inquiry Officer also cannot take shape of a legal argument. The role of a Presenting Officer is that of presenting the case of the employer. The delinquent has no right to object to any person being appointed as a Presenting Officer, especially when, no prejudice is shown to be likely to be caused to the delinquent officer. In absence of any rule prohibiting a subordinate officer from being appointed as a Presenting Officer, the objection of the petitioner to Shri Ghanchi being appointed as a Presenting Officer was rightly rejected by the Inquiry Officer.

16. In view of the above discussion, I find that none of the contentions raised by the learned Counsel for the petitioner can be accepted. The respondent-authorities have come to the conclusion, on the basis of evidence led during the Departmental Inquiry, that Manager (Commerce) -the petitioner had committed certain acts and omissions which led to financial loss to the respondent. The respondent-authorities have, therefore, ordered recovery of the amount of loss caused by the petitioner. No objection can be taken to such a course adopted by the respondent-authorities.

17. In the conclusion, I do not find any illegality in the impugned orders passed by the respondent-authorities and the petition is, therefore, rejected.

(Akil Kureshi, J)

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